

AN APPRAISAL OF AL-IJĀRAH AL-MAWŞŪFAH FĪ AL-DHIMMAH (FORWARD IJĀRAH) FROM FIQH PERSPECTIVE

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ABSTRACT

Al-Ijārah Al-Mawşūfah Fī Al-Dhimmah (forward *ijārah*) is a new form of transactions introduced to the Islamic banking industry which has original ground in the classical books of Islamic Jurisprudence. Most of the classical scholars discussed it with particularized *ijārah* in parallel without any separation of chapters or headings unlike al-Bahūtī and al-Minhājī. The scholars of four schools of Islamic Law are unanimously agreed on the legality of forward *ijārah* albeit some contemporary scholars mention the early dispute in this regard and attribute prohibition of forward *ijārah* to Ḥanafī School. This attribution is not accurate as it is proved by their many classical texts. Forward *ijārah* could be more flexible for both customers and banks to the extent that it does not become void if the stipulated usufruct damages while particularized *ijārah* becomes void because of damage of the object. Therefore, there is a need for further research in this regard in order to innovate some new tools that can improve the services of Islamic financial intuitions.

KEY WORDS: *Ijarah Mawsufah Fi Dhimmah*, Legality, Dispute, Forward *Ijarah*, Fiqh

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INTRODUCTION:

Forward *ijārah* is a newly introduced mode of financial transactions to the Islamic financial institutions. There is some confusion over its legality as some contemporary scholars mention disagreement among the early Muslim scholars and attribute its prohibition to the Ḥambafī School. In fact, the classical texts of Ḥanafī School and other schools contains many texts that prove the agreement of Ḥanafī standpoint as well. Hence, this issue deserves to be investigated. In addition, since most of the classical scholars discuss the forward *ijārah* and particularized *ijārah* together without classifying them into individual chapters, all the rules and regulations concerning it are not separately clear. A few scholars, on the other hand, discuss it as an individual kind of *ijārah* to some extent.

Currently, forward *ijārah* appears as an individual mode of transactions in the Islamic banking industry. Therefore, all the rules and regulations pertain to forward it need to be identified and discussed individually, in order to investigate its validity and ground according to the classical *fuqahā* and to support in improving the regulations of Islamic finance industry. At this very juncture, this paper aims to study views of the classical scholars about the legality of forward *ijārah* and discuss its parameters relying on the classical juristic books and the writings of contemporary scholars as well. The method adopted in this paper is analytical approach. This paper is presented mainly in two parts.

The first part provides an overview on forward *ijārah*. The discussion begins with the definition of *ijārah* in general, in order to develop the preponderant definition of forward *ijārah* which maintains the criteria of *jāmi' māni'* definition. The discussion proceeds with the classical texts regarding the legality of forward *ijārah* to examine the issue whether it is disputed or agreed unanimously among the four

schools of *fiqh*. It is followed by the opinions of contemporary scholars and the *takyīf fiqhī* of forward *ijārah*.

The second part focuses on the parameters of forward *ijārah* including its pillars, classification, and its relation to the other kinds of *ijārah*. The discussion proceeds with the rules of forward *ijārah* considering them general rules and particular rules to its each kind. Finally, the paper puts some suggestions based on the discussion herein.

1. FORWARD *IJĀRAH*, ITS MEANING AND LEGALITY

1.1 Definition of *al-Ijārah* and *al-Ijārah al-Mawṣūfah fī al-Dhimmah*:

1.1.1 Definition of *al-Ijārah*: Literally, *ijārah* derives from the root word *ajr* which means reward, requital, repayment etc. Some derivatives (*mushtaqqāt*) of *ajr* are *ujrah*, *ijārah*, *ajīr* etc. According to lexicologists *ajr* means reward on action. It also means reward. *Ujrah* means rental and its plural is *ujūr* or *ājār*. *Al-ajr* and *al-ijārah* are synonymous and infinitives (*maṣḍar*), and there is no difference between them from lexical perspective. This meaning is closer and more suited to the technical meaning of *al-ijārah*. However, the well-known use of *al-ajr* is the reward which is given by Allah ‘*ajja wa jalla*’ on good deeds of human being and *al-ijārah* is the requital on person’s action for his companion. Hence, someone who works for his friend on payment is called *ajīr*¹. Actually, the original *maṣḍar* is *al-ījār* and *al-ijārah* is metaphorically used in the meaning of *al-ījār*. *Al-ijārah* was popular among the early scholars while the later scholars prefer the use of *al-ījār*.

¹ al-Zubaydī, al-Sayid Muḥammad Murtaḍā al-Ḥusaynī. (1965). *Tāj al-‘Arūs Min Jawāhir al-Qāmūs*. Taḥqīq: ‘Abd al-Sattār Aḥmad Farāj. al-Kuwayt: Wazārat al-Irshād wa al-Anbā’ 10/24-25; al-Jawharī, Ismā‘īl Ibn Ḥammād. (1990). *al-Siḥāḥ Taj al-Lughah wa Siḥāḥ al-‘Arabiyyah*. Taḥqīq: Aḥmad ‘Abd al-Gafūr ‘Aṭṭār. Bayrūt: Dār al-‘Ilm Lil Mallāyīn. 3/576.

In technical meaning, *al- ijārah* is defined by different terms according to the different schools of Islamic jurisprudence. Some important definitions are mentioned below:

1. The Ḥanafī School of Islamic law defines; *al-ijārah* is a contract on usufruct in exchange of compensation that is counter value or price².
2. Mālikī School defines; *al- ijārah* is transferring ownership of permissible usufruct of a thing for a specific period of time in exchange of consideration³.
3. Shāfi‘ī School defines; *al- ijārah* is transferring ownership of usufruct in exchange of consideration with conditions such as knowledge about consideration, its eligibility for spending and permissibility. The first condition excludes *al-musāqah* (sharecropping) and *al-ju‘ālah* (commission) while the last condition excludes usufruct of impermissible things like the usufruct of *bud‘* (women’s private part) from the definition of *al- ijārah* ⁴ because the contract on it is not called *ijārah*. Ramallī mentions, Transferring ownership of usufruct in exchange of consideration with conditions⁵.
4. Ḥambalī School defines; *al- ijārah* is a contract on a specific permissible usufruct for a specific period of time either the subject matter is a particular existing item or stipulated by specifications or it is particular work in exchange of specific consideration, and befitting from the usufruct comes subsequently⁶.

² al-Sarakhsī, Shamsaddīn Abu Bakr Muhammad. (2000). *al-Mabsūt*. Bayrūt: Dār al-Fikr. 8/65.

³ al-Zuhaylī, Wahbah. (1985). *al-Fiqh al-Islāmī wa Adillatuh*. Dimashq: Dār al-Fikr. 4/732.

⁴ al-Bujayramī, Sulaymān bin Muḥammad bin ‘Umar al-Shāfi‘ī. (1996). Bayrūt: Dār al-Kutub al-‘Ilmiyyah. 3/560.

⁵ al-Ramallī, Shams al-Dīn Muḥammad bin Abī al-‘Abbās ‘Aḥmad bin Ḥamzah bin Shihāb al-Dīn. (1984). *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj*. Bayrūt: Dār al-fikr. 5/261.

⁶ al-Bahūtī, Maṣṣūr bin Yūnus bin Idrīs. (1996). *Sharḥ Muntahā al-irādāt*. Bayrūt: ‘Ālam al-Kutub. 2/241.

Discussion on the Definitions:

However, Mālikī Fuqahā single out *al- ijārah* for the contract on human services and transportable things except ships and animals. They name the contract on usufruct of lands, houses, ships, and animals, *al-kirā'* despite *al- ijārah* and *al-kirā'* render the same meaning according to their viewpoint. In addition, Ḥanafī scholars sometimes add the word '*muqṣūdah*' (purposeful) to the definition of *al- ijārah*. It means the usufruct in *al- ijārah* should be purposeful from the subject matter leased. Some of them try to explain it saying the usufruct should be deliberate according to Sharī'ah and reason and the sole reason is not enough to prove the purpose.⁷

Likewise, scholars of other schools of *fiqh* try to give the definition of *al- ijārah* by mentioning some conditions of *al- ijārah* such as the usufruct should be permissible, purposeful, and specific. The compensation should be determined as well. There are also some other conditions of *ijārah* which are not mentioned in these connotations stated above such as the usufruct should be deliverable, owned by *mu'ajjir* (lessor). The compensation should be valuable, deliverable and owned by *musta'jir* as well.

It is worth mentioning that the conditions are not the parts and parcels of anything's essence rather these are its outer features. Definition of anything should be consisted of its essential elements (*arkān*) rather than its conditions (*shurūt*). That is why; conditions should not be mentioned in the definition. If the conditions are to be mentioned in the definition, the other conditions that are not stated in these connotations also should be mentioned.

⁷ Abū Ghuddah, 'Abd al-Sattār. (1998). *al-Ijārah*. Jiddah: Majmū' al-Dallat al- Barakah. P. 10.

The Preponderant (Rājih) Definition of al- Ijārah:

According to Wafā, the preponderant definition of *al- ijārah* is “*tamlīku manfa‘atin makhṣūṣatin bi ‘iwaḍin makhṣūsin*”. It means “Transferring ownership of particular usufruct in exchange of particular consideration”. Alternatively, he prefers, “*tamlīku manfa‘atin bi ‘iwaḍin bi shurūṭin makhṣūṣatin*”. It means “transferring ownership of usufruct in exchange of consideration with particular conditions”. He mentions both of them as the preponderant definitions of *al- ijārah* rather than all connotations mentioned above because these are more concrete than others and are in line with the logical structure of *jāmi‘ māni‘* (inclusive and exclusive) definition. To illustrate, it consists of *jins* (superordinate) which is *tamlīk* and some *faṣl* (separating idiom)⁸ that are *manfa‘atin* (usufruct), *makhṣūṣatin* (particular), *bi ‘iwaḍin* (in exchange of consideration), and *makhṣūsin* (particular). Moreover, *makhṣūṣatin* means that the usufruct which is allowed to be leased is not any ordinary usufruct rather it is special one which requires fulfilment of all conditions mentioned before⁹. Similarly, *makhṣūsin* also means that the consideration or the counter value which is given by the *musta‘jir* (leasee) in any normal ordinary consideration rather it should fulfil specific conditions. However, in the researchers’ viewpoint, there is a repeated word i.e. *mukhṣūsin* in the first definition which is not suitable for any definition. As to the second definition, *makhṣūṣatin* is an extra word and not necessary in the definition as a *faṣl* because it is clear that *al-ijārah* requires fulfilment of specific conditions without mentioning it like other contracts. Moreover, this *faṣl* confines the conditions to the specific and determined conditions while the scholars have disagreement in

⁸ *Jins* is a general term which encompasses another more specific word e.g. animal is the *jins* of cat, dog, human, etc. *faṣl* means separation and it excludes all extra elements that are not from the defined term e.g. usufruct is a *faṣl* for transferring ownership. It excludes the transferring ownership of objects from the definition because transferring ownership of objects is *bay‘*. al-Mirqāt fī al-Mantiq. pp. 37-38.

⁹ Wafā, Muḥammad ‘Alī ‘Abd al-Raḥmān. (1996). ‘Uqūd al-Ījār al-Fāsīdah fī al-Fiḥ al-Islāmī wa al-Tashrī‘āt al-Waḍ‘iyyah al-‘Arabiyyah: Dirāsah Muqāranah. al-Qāhirah: Dār al-Fikr al-‘Arabī. pp 25-26.

determining the conditions. Some conditions are unanimous and some others are controversial. Therefore, if the *faṣl makḥṣūṣatin* is removed the definition will be flexible and compatible with all schools of Islamic law because it general and encompasses all conditions irrespective of unanimous or disputed ones.

Hence, the preponderant and more flexible definition of *al-ijārah* is “*tamīku manfa‘atin bi ‘iwaḍin bi shurūṭ*”¹⁰. It means “Transferring ownership of usufruct in exchange of consideration with conditions”. It is mentioned by shāfi‘ī scholar al-Ramallī. This definition is *jāmi‘* and *māni‘* because it consists of *jins* and necessary *faṣl*. On the other hand, it includes only the *arkān* (pillars) and does not need the *shurūṭ* (conditions) because *rukn* (pillar) of anything is its inner nub whereas the condition of anything is its outer attribute. In addition, the *fuṣūl* (separating idioms) are not repeated and at the same time it covers all the conditions of *al-ijārah* whether those are the conditions of usufruct or consideration, and whether those are unanimous or required by any school of *fiqh*.

It is worth mentioning that the conditions of usufruct are to be permissible, purposeful, determined, specific period, deliverable and owned by *mu‘ajjir* whereas the conditions of consideration are to be determined, valuable, deliverable and owned by *musta‘jir*. The preponderant definition of *al-ijārah* is free from all these conditions.

1.1.2 Definition of *al-Ijārah al-Mawṣūfah fī al-Dhimmah*:

As the early Muslim scholars, they did not pay their special attention to *al-ijārah al-mawṣūfah fī al-dhimmah* considering it an individual contract; therefore, the researchers do not find specific definition of it mentioned in the classical books. Most of the scholars simply mention *al-ijārah al-mawṣūfah fī al-dhimmah* while discussing

¹⁰ al-Ramallī. 2/261.

the conditions of subject matter as whether it is an existing item or non-existent item stipulated by specifications. Some of them namely the Ḥambalī scholar Ibn Najjār al-Fatūhī¹¹ mentions *al-ijārah al-mawṣūfah fī al-dhimmah* saying “either the subject matter is a particular existing item or stipulated by specifications” while giving the definition of *al-ijārah* in general. However, this indication can be helpful to define the *al-ijārah al-mawṣūfah fī al-dhimmah*. Al-Minhājī discusses more on *al-ijārah al-mawṣūfah fī al-dhimmah* compared to other classical scholars but he also does not provide any particular definition for it. Instead, He gives a statement which resembles its connotation while discussing its type. He says: “mode of *al-ijārah al-wāridah ‘alā al-dhimmah* (that is executed on delay) is executed by deferring the usufruct and paying the rental in advance.

With regard to the contemporary scholars, since it is a newly introduced mode of Islamic financial transactions, they also gave different definitions of *al-ijārah al-mawṣūfah fī al-dhimmah*. As far as the researchers know Abū Guddah is the first pioneer among the contemporary scholars who paid their attention to this mode of *al-ijārah al-mawṣūfah fī al-dhimmah*. Subsequently, some other scholars wrote on this mode. Some important connotations are mentioned below:

1. Abū Guddah says: “*al-ijārah al-mawṣūfah fī al-dhimmah* is that wherein the *mu‘ajjir* (lessor) adheres to render usufruct stipulated thoroughly -by the qualities of *salam*- enough to eliminate the potential conflict about the usufruct, whether the subject matter is benefit of an object such as leasing a stipulated car, or service of a human such as tailoring and teaching”. It is not a condition that the lessor should possess the benefit at the time of contract

¹¹ Ibn al-Najjār, Taqīyy al-Dīn Muḥammad bin Aḥmad bin ‘Abd al-‘Azīz al-Fatūhī. (2000). Bayrūt: Mu‘assasāt al-Risālah. 4/5.

rather the usufruct is attached to the future so that he becomes able to possess it by the promised time when the *ijārah* is attached to be executed¹².

2. Al-Quradāgī defines *al-Ijārah al-mawṣūfah fī al-dhimmah* as a contract where the subject matter is usufruct stipulated in obligation in such a way that removes potential dispute¹³.
3. Aḥmad Naṣṣār denotes *al-ijārah al-mawṣūfah fī al-dhimmah* by different idioms such as “sale of future usufruct in exchange of immediate cash”. Second, it is “a *salam* contract on usufruct” whether the usufruct comes from the objects or acts. Third, it is “rental that entails obligation”, because the promised usufruct is attached to obligation of *mu’ajjir* (lessor) and is not particularized. Fourth, it is “rental executed on guaranteed usufruct” because *mu’ajjir* here guarantees the usufruct in all situations and it is attached to his obligation¹⁴.

Discussion on the Definitions:

As for the definition given by Abū Guddah, it is synthesized from a number of references as he states explicitly. It is also observed that this statement could be considered a connotation for *al-Ijārah al-mawṣūfah fī al-dhimmah* rather than a logical *jāmi’ māni’* definition because it does not consist of the essential elements of a definition.

As regards the definition given by al-Quradāgī, he does not mention the *jins* in the definition rather he mentions a phrase which is more general than the *jins* of *al-*

¹² Abū Ghuddah, ‘Abd al-Sattār. (2007). *al-Taṭbīqāt al-‘Amaliyyah li al-Ijārah al-Mawṣūfah fī al-Dhimmah*. Paper presented at the 28th al-Barakah Symposium on Islamic Economics, Jiddah. P. 73.

¹³ al-Quradāgī, Aliyy Muḥyi al-Dīn. (2008, July). *al-Ijārah ‘alā Manāfi’ al-Ashkhāṣ: Dirāsah Fiqhiyyah Muqāranah fī al-Fiqh al-Islāmī wa Qānūn al-‘Amal*. Paper presented at 18th session of European Council for Fatwā and Research, Paris. P. 14.

¹⁴ Aḥmad, Muḥammad Maḥmūd Naṣṣār. (2009 June). *Fiqh al-Ijārah al-Mawṣūfah fī al-Dhimmah wa Taṭbīqātuhā fī al-Muntajāt al-Māliyyah al-Islāmiyyah li Tamwīl al-Khidmāt*. Paper presented at the conference on Islamic Banking between Reality and Expectation organized by the Division of Islamic affairs and welfare work in Dubai, Bahrain. P. 102.

ijārah. In addition, he adds another phrase to this term which can include all the conditions of *al-ijārah* despite the definition should be free from conditions. Hence, this connotation is also not a proper definition.

In connection with the connotations provided by Aḥmad Naṣṣar, he intends to explain the nature of *al-ijārah al-mawṣūfah fī al-dhimmah*. That is why; he mentions different terms that include some of the conditions of *al-ijārah al-mawṣūfah fī al-dhimmah*. Moreover, he does not mention the essential nubs of the *al-ijārah al-mawṣūfah fī al-dhimmah*. Hence, none of these terms could be *jāmi‘ māni‘* definition for this type of *al-ijārah*.

The Preponderant Definition of al-Ijārah al-Mawṣūfah fī al-Dhimmah:

Since none of these definitions is a *jāmi‘ māni‘* definition of *al-ijārah al-mawṣūfah fī al-dhimmah* given by the classical scholars and the contemporary scholars so far, there is a need to provide the definition of it in order to crystallize the theory of *al-ijārah al-mawṣūfah fī al-dhimmah*. Based on its previous terms and idioms provided by scholars and the preponderant definition of *al-ijārah* in general, the concrete definition of *al-ijārah al-mawṣūfah fī al-dhimmah* is “*tamīku manfa‘atin mawṣūfatin fī al-dhimmah bi ‘iwaḍin bi shurūṭ*”. It means “Transferring ownership of usufruct stipulated in obligation in exchange of consideration with conditions”.

Explanation of the Definition:

This definition is *jāmi‘* and *māni‘* because it consists of *jins* and *faṣl*. In this definition *tamlīk* (transferring ownership) is *jins* which includes transfer of everything whether it is object transfer or usufruct transfer. In other word, it includes *ijārah*, sale, gift, charity, marriage, commission, *muḍārabah*, sharecropping, etc. *Manfa‘atin* is the first *faṣl* which excludes transferring ownership of objects from the definition because this kind of transferring is *bay‘*, *hibah* charity, etc. *Mawṣūfatin fī al-dhimmah* is the

second *faṣl* which excludes the usufruct of particular objects because leasing usufruct of particular objects is *ijārah mu'ayyinah* (particularized *ijārah*). The third *faṣl* is *bi 'iwāḍin* which excludes gifting usufruct, bequeathing it, partnership, lending, etc¹⁵. The fourth *faṣl* is *bi shurūṭ* which means the usufruct and the consideration are not ordinary ones rather there some conditions that should be fulfilled for the validity of the contract. *Al-ijārah al-mawṣūfah fī al-dhimmah* is termed as forward *ijārah* in English.

1.2 Legality of Forward *Ijārah*:

1.2.1 Legality of Forward *Ijārah* in General:

Since forward *ijārah* is a type of *ijārah*, its permissibility is drawn from the evidences of *ijārah* and *salam* in general albeit the scholars have disagreement in the legality of forward *ijārah*. The scholars refer to conditions of *ijārah* and *salam* according to their point of view while discussing the jurisprudential adaptation (*takyīf fiqhī*) and the conditions of forward *ijārah*. There is an agreement among the scholars on the permissibility of *ijārah* and *salam* that is proven by the evidences of the Holy Qur'ān, the Sunnah, and Ijamā' (consensus). As for the evidence of the Holy Qur'ān on *ijārah*, Allah (SWT) says:

- “And if they suckle your [offspring], give them their recompense: and take mutual counsel together, according to what is just and reasonable”. [al-Ṭalāq: 6]. As long as the verse signifies the consideration for suckling it means the contract on suckling is *ijārah* contract. This is the literal meaning of the verse because suckling without contract does not necessitate any counter value rather it is considered donation.

¹⁵ al-Zuhaylī. 4/732. al-Bahūtī. 2/241.

- “Said one of the [damsels]: O my [dear] father! Engage him on wages: truly the best of men for thee to employ is the [man] who is strong and trusty. He said: "I intend to wed one of these my daughters to thee, on condition that thou serve me for eight years; but if thou complete ten years, it will be [grace] from thee. But I intend not to place thee under a difficulty: thou wilt find me, indeed, if Allah wills, one of the righteous”. [al-Qasas: 26-27]. Here, Allah (SWT) narrates the story of Mūsā (PBUH) when he was employed as a shepherd in exchange of determined compensation. This story proves that *ijārah* was known and allowed for his nation and for every nation in the same way as well. This is because *ijārah* is the necessity of mankind and wellbeing of social relation in the society¹⁶. The laws revealed prior to the advent of Islam (*shar‘u man qablanā*) are also laws for us until its abrogation (*naskh*) as it is settled in *uṣūl al-fīaq*¹⁷.
- “Then they proceeded: until, when they came to the inhabitants of a town, they asked them for food, but they refused them hospitality. They found there a wall on the point of falling down, but he set it up straight. [Moses] said: "If thou hadst wished, surely thou couldst have exacted some recompense for it"! [al-Kahaf: 77]. In this verse, Mūsā (PBUH) said to Khidr to take compensation in exchange of erecting the wall which is torn down when people of the village refused to receive them as guests. It was ought not to work free of charge. al-Qurṭubī says: “it proves the validity of permissibility of *ijārah* and it is a norm of prophets and messengers.”¹⁸

¹⁶ al-Qurṭubī, Abū ‘Abd Allāh Muḥammad ibn Aḥmad al-Anṣārī. (1985). *Al-Jāmi‘ū li Aḥkām al-Qur‘ān*. Bayrūt: Iḥyā’ al-Turāth al-‘Arabī. 13/271.

¹⁷ al-kāsānī, ‘Alā’ al-Dīn Abū Bakr bin Mas‘ūd. (n.d.). *Badā’i‘ al-Ṣanā’i‘ fī Tartīb al-Sharā’i‘*. Publication of Zakariyā ‘Alī Yūsuf. 5/2555.

¹⁸ al-Qurṭubī. 11/32.

As to the Sunnah of the Prophet (PBUH), he says:

- “Give the worker his wage before his sweat dries”¹⁹. In the *ḥadīth*, the prophet (PBUH) commands to pay the recompense without any delay just after finishing the work. If the *ijārah* is not permissible he does not command for immediate payment.
- “He who hires a worker must inform him of his wage”²⁰. In this *ḥadīth*, he (PBUH) commands to determine the recompense of their labour. If the *ijārah* is not allowed he does not command for determination of payment.
- It is evidenced that the prophet, peace be upon him, and Abū Bakr had hired a guide from Banī al-Dayl, then the prophet said: “Three people I shall be their enemy in the doomsday” then he mentioned : A man who hired a worker to carry out some work for him, but did not give him his wage²¹.

The third *ḥadīth*, there is a threat by the prophet (PBUH) mentioned in it for those who do not pay their recompense. This *ḥadīth* proves that denying the recompense of worker is *ḥarām* (forbidden). This is an explicit evidence of the permissibility of *ijārah* because if the *ijārah* is not legal, he (PBUH) does not threaten those who deny paying the recompense with his enmity at the day of compensation.

In the same way, the evidences of *salam* are also supportive of the legality of forward *ijārah*. With regard to the evidence of the Holy Qur’an on *salam*, Allah (SWT) says:

- “O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing”. [al-Baqarah: 282].

¹⁹ Ibn majah. No. 2443. al-Bayhaqī. No. 6/120.

²⁰ Ibn al-Mulaqqin Sirāj al-Dīn Abū Ḥafs ‘Umar Ibn ‘Aliyy Ibn Aḥmad al-Shāfi‘ī al-Miṣrī. (n.d.1st ed.). Khulāṣat al-Badr al-Munīr fī Takhrij Kitāb al-Sharḥ al-Kabīr li al-Rāfi‘ī. al-Riyād: Maktabat al-Rushd. 2/107. No. 1654.

²¹ al-Bukhārī. 6/120. No. 2263.

The phrase “transactions involving future obligations” in the context of the above verse also includes the *salam* contract in which the delivery of the subject matter of *salam* occurs also in the future. Ibn ‘Abbās also refers to this verse when explaining the *salam* contract²². As the verse talks about future obligations of any transaction, it encompasses forward *ijārah* as well except when it includes any prohibited element.

Regarding the Sunnah the Prophet (PBUH) says:

- “Whoever wishes to enter into a contract of *salam*, he must effect the *salam* according to the specified measure and the specified weight and the specified date of delivery”²³. Since *salam* contract is a forward sale, there are some obligations that should be executed in future. Likewise, forward *ijārah* has some future obligations similar to that of *salam* contract because it is *salam* of usufruct as it will be discussed later.

As regards the Ijmā‘ on the validity of *ijārah* and *salam*, there is an agreement among the Ummah from the time of Saḥābah (companions) up to this day to conduct *ijārah*²⁴, and none violated this consensus except ‘Abd al-Raḥmān Ibn al-Aṣam who opined that it is prohibited due to *gharar* as it is a contract on usufructs not yet found, but jurists refuted his argument indicating that here *gharar* shall be ignored because the contract on usufructs is not possible after the existence of usufructs because they perish as time passes so a contract for them should be concluded before they come to being such as Salam contract on assets²⁵.

The evidences mentioned above also prove the legality of forward *ijārah* in general because forward *ijārah* is a kind of *ijārah*. Forward *ijārah* is not different in its rules from the original *ijārah* except that the subject matter herein non-existent or

²² Ibn kathīr, Abū al-Fidā’ Ismā‘īl bin ‘Umar ‘Imād al-Dīn al-Qurashī al-Dimashqī. (1999). Bayrūt: Dār al-Ṭayyibah. 1/722.

²³ al-Bukhārī. No. 2240. Muslim. No. 1604.

²⁴ al-Mugnī. 8/6. al-Zuḥaylī. 4/598.

²⁵ al-Zuḥaylī. 4/730.

not owned whereas it is a particular existing item in original *ijārah*. As long as the *ijārah* is permissible in the Islamic Sharī‘ah its modes are also permissible while fulfilling their respective conditions and being kept within the parameters established by the scholars. In the same way, as long as it is similar to *salam* contract according to some scholars, its legality also derived from legality of *salam*. This is because some scholars namely Ibn Mufliḥ and al-Nawawi refer its legality to the legality of *salam* contract.

1.2.2 Legality of Forward Ijārah in Particular:

Scholars of all popular schools of Islamic jurisprudence i.e. Ḥanafī, Mālikī, Shāfi‘ī, and Ḥambalī agreed on the legality of forward *ijārah* except the Ḥanafī scholars allowed on the basis of *istiḥsān* (juristic preference)²⁶ while the scholars of other three schools allowed it on basis of the general evidences of *ijārah*. The scholars who allowed forward *ijārah* did not provide any particular evidence in order to substantiate its legality in particular rather they referred it to the legality of original *ijārah* and *salam*. Although they did not mention any evidence in particular, they deferred in terms of referred evidence. To illustrate, some of them considered it similar to *salam* in terms of conditions. Hence, in their viewpoint, the evidences of its legality are the same as the evidences of *salam*. By contrast, some others who are content with the attributes of *salam* except the condition of advanced payment of recompense, they considered evidences original *ijārah* evidences of legality of forward *ijārah* accordingly.

Justification of Hanafī’s View on Forward Ijārah in Particular:

Although some scholars attribute prohibition of forward *ijārah* to Ḥanafī School, Ḥanafī texts explicitly signify their agreement to its legality. For example, al-

²⁶ *Istiḥsān* is a method of exercising personal opinion in order to avoid any rigidity and unfairness that might result from the literal enforcement of the existing law. 218. Principles of Islamic Jurisprudence By M. H. Kamali. p. 218.

Samarqandī and al-Kāsānī mention the viewpoint of Ḥanafī scholars about forward *ijārah* that prove their agreement with other three schools. It is also mentioned in M and M as well.

Al-Samarqandī states: “As for the damage of leased item (subject matter), if is a particular object and damages, the transaction becomes null and void. And if it is not a particular object, such as the *ijārah* which is executed on sumpter stipulated by specifications for carrying or riding, and perishes after it is delivered to *musta’jir*, *mua’jjir* must replace it by another one to carry the luggage and he has no right to revoke it because the *musta’jir* is not unable to fulfill what is the contract requires. The requirement is to carry his luggage to such place”²⁷.

Al-Kāsānī says: “If the *ijārah* occurs to pack-animal stipulated by specifications and the pack-animal is delivered to *musta’jir* and it dies after the *mua’jjir* received it, *ijārah* will not be void. *Mua’jjir* must replace it by another one for *musta’jir* due to that the contract is not occurred to the animal which died particularly. This is because the contract is executed on the usufruct with future obligation when the pack-animal is not particularized.”²⁸

In addition, there are some clauses mentioned in Majallat that prove the same viewpoint of Ḥanafī School regarding forward *ijārah* such as 538, 540, 541, 466, e. t. c. One of these clauses is “If a bargain has been struck to carry a certain place and the animal becomes fatigued and stops on the way, the owner of the animal is bound to charge such load on to another animal and carry it to the place in question.”²⁹

Likewise, there are some clauses mentioned in the Murshid that denote legality of forward *ijārah* according to Ḥanafī School such as 580, 582, 598, 616, e. t.

²⁷ al-Samarqandī, Muḥammad bin Aḥmad bin Abī Aḥmad Abū Bakr ‘Alā’ al-Dīn. (1984). Bayrūt: Dār al-Kutub al-‘ilmiyyah. 2/361.

²⁸ al-Kāsānī, ‘Alā’ al-Dīn. (1982). Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’. Bayrūt: Dār al-Kitāb al-‘Arabī. 4/233.

²⁹ Majallat. *Māddah*. Māddah. 540. P.85.

c. One of these clauses is "...if the *musta'jir* hires a riding animal not in particular (to carry his luggage to a specific place) he has right to demand another animal."³⁰ The phrase 'raiding animal not in particular' means any animal stipulated by specifications.

Refutation of Attribution of Hanafi's View:

Some contemporary scholars like Nazīh Ḥammad³¹ and Aḥmad Naṣṣār³² mention the disagreement among the four classical schools of Islamic Jurisprudence about the legality of forward *ijārah* and attribute the view of illegitimacy to the Ḥanafī School. This attribution is not accurate because the juristic texts of Ḥanafī School substantiate their agreement with other schools on its legitimacy. They mention two clauses from Murshid al-Ḥayrān (clause: 580) and Majallat al-Aḥkām al-'Adaliyyah (clause: 449), and one principle of Ḥanafī schools whereby they deducted prohibition forward *ijārah* and attribute it to Ḥanafī School.

As for Majallat al-Aḥkām al-'Adaliyyah, it is mentioned that "The subject matter of the contract of hire must be specified. Consequently, if one of two shops is let on hire, without the particular shop is question being specified, and the lessee being given an option as to which one he will take, such contract is invalid. However, these texts are subject to explanation and refutation."³³ This clause states that the Ḥanafī School prohibits making the usufruct to be one of two objects without any specification or any distinction in the case of the usufruct of *ijārah mu'ayyinah*. Thus Ḥanafī School is agreed with other schools because it include the *jahālah* (unknowing) and *gharar* (ambiguity and uncertainty) that must be removed from the

³⁰ Murshid al-Ḥayrān. Māddah: 598. P. 152.

³¹ Ḥammad, Nazīh. (2007). Fī Fiqh al-Mu'āmalāt al-Māliyyah wa al-Maṣrafiyyah al-Mu'āṣarah: Qirā'h Jadīdah. Dimashq: Dār al-Qalam.

³² Aḥmad Naṣṣār. Pp. 102-103.

³³ Majallat al-Aḥkām al-'Adaliyyah. (h. 1302). Māddah: 449. Bayrūt: al-Muṭbi'ah al-Adabiyyah. P. 75. Translation is taken from http://www.iiu.edu.my/deed/lawbase/al_majalle/al_majalleintro.html (1 of 7) [12/31/2000 4:28:45 PM].

subject matter in the case of *ijārah mu‘ayyinah*. It is unlike subject matter of the forward *ijārah* wherein the *gharar* is removed by stipulating with its necessary traits usually. In the same way, both parties also describe the qualities of the object which is usufruct, and the compensation differs according to as well. The classical books of Ḥanafī School denote the legality of the type of *ijārah* even the Majallat al-Aḥkām al-‘Adaliyyah itself contains several clauses that proves explicitly the legitimacy of forward *ijārah* as mentioned above.³⁴

As to the clause of Murshid al-Ḥayrān, it is mentioned that “consent of both contracting parties and particularization of subject matter are made conditions for the legality of forward *ijārah*.”³⁵ The discussion applicable in response to the clause of Murshid al-Ḥayrān is exactly the same as on Majallat mentioned before. In addition, there are also several clauses mentioned in Murshid al-Ḥayrān itself that prove the legitimacy of forward *ijārah* as mentioned before.

As regards the principle of Ḥanafī School, the usufruct is not considered property. Who attribute the prohibition of forward *ijārah* to Ḥanafī School they derived the prohibition of usufruct of in obligation stipulated by specifications from this principle and attribute their own deducted conclusion to Ḥanafī School as its opinion. In fact, all Ḥanafī scholars do not support the principle. In addition, there are many places where usufruct is mentioned as property. In comparison between these two types of texts in Ḥanafī School, it can be concluded that the Ḥanafī Scholars do not consider that usufruct is not price worthy property in its originality. Instead they exclude the usufruct of *ijārah* (whether it is particularized or forward) from this

³⁴ Ḥāmid bin Ḥasan bin Muḥammad ‘Aliyy Mīrah. (n.d.). *Ṣukūk Manāfi‘ al-A‘yān al-Mawṣūfah fī al-Dhimmah wa Ṣukūk Manāfi‘ al-A‘yān al-Mu‘ajjarah liman Bā‘ahā Ta’jīran Muntahiyān bi al-Tamlīk*. Paper presented at 20th session of Majma‘ al-Fiqhī al-Islāmī al-Dualī. P. 9.

³⁵ Murshid al-Ḥayrān ilā Ma‘rifat Aḥwal al-Insān. (1909, 2nd ed.). Miṣr: al-Muṭbi‘ah al-Amīriyyah.

principle. Here, they consider the usufruct price worthy property on the basis of exception and *khilāf al-qiyās* (contrary to analogical reasoning).³⁶

In addition, Ḥanafī School does not differentiate between particularized *ijārah* and forward *ijārah* while discussing permissibility in Islam rather most of the classical book of in this school discussed both types in parallel. Ḥanafī scholars allowed *ijārah* based on the evidence from the Quran, Sunnah and Ijmā‘ on the contrary to general Qiyās that indicates the disallowance of *ijārah* because it is *bay‘* of non-existent items. That is why they state the permissibility of *ijārah* on the basis of *khilāf al-qiyās* and *istihsān* drawn from the evidences and they do not differentiate between these two types of *ijārah*.³⁷ Moreover, Ḥanafī School seems to be wider and more flexible in this regard because they do not require immediate payment the compensation before a period of time passes unlike to the other scholars. They require immediate payment.³⁸ In addition to the Ḥanafī texts, juristic texts of other schools also denote Ḥanafī’s agreement about forward *ijārah*.³⁹ Allah SWT knows the best.

Views of Contemporary Scholars’ on Hanafī Standpoint:

Ḥāmid Mīrah says: “The ruling on Issuance of *ṣukūk* for the usufruct of objects stipulated in obligation depends mainly on the resolution of the *fuqahā* with regard to *ijārah* of the usufruct of objects stipulated in obligation; which the four schools of Islamic jurisprudence i.e. Ḥanafī, Mālikī, Shafī‘ī, and Ḥambalī are unanimously agreed on in general.”⁴⁰

Yūsuf al-Shubaylī says: “All scholars generally opine that *ijārah* is permitted either the subject matter is particular item (particularized) or described in obligation (forward). Attribution of prohibition of forward *ijārah* to the scholars of Ḥanafī

³⁶ Ḥāmid Mīrah. P. 9.

³⁷ al-Kāsānī. 4/14-16.

³⁸ al-Kāsānī. 4/69. Abū Guddah. 86.

³⁹ al-Mughnī. 8/9.

⁴⁰ Ḥāmid Mīrah. P. 8.

School is inaccurate rather the view stipulated in their classical books is its legality”. He proceeded with their textual evidences in order to prove his statement.”⁴¹

Sāmī al-Suwaylim makes a comment while discussing the legality of forward *ijārah* according to Ḥanafī School this *ijārah* saying: there is no deferment of leasing object in this *ijārah* rather there is guaranty to change it if it perishes. Then he substantiates his comment with the text of al-Kāsānī and al-Samarqandī.⁴²

Mukhtār al-Sallāmī states: “Four schools of Islamic Jurisprudence agreed on the permissibility of forward *ijārah*; and they do not look at the existence of the object as a condition at the time the contract is concluded because it is similar to salam in terms of obligation; on basis that attachment of leasing a specific object to the future date.”⁴³

Al-Qurah Dāgī says: Attachment to the future time is allowed by Ijmā‘ in the *ijārah* of stipulated usufruct.⁴⁴ Attachment to the future time is one the requirements of forward *ijarah*.⁴⁵

Based on all these textual evidences, discussion, and views, it is proved that the Ḥanafī scholars also agree with other three schools about the legality of forward *ijārah*. Thus it can be concluded that the four schools of Islamic law are unanimously agreed on the legitimacy of forward *ijārah*.

1.2.3 Jurisprudential Adaptation (Takyīf Fiqhī) of Forward Ijārah:

Although scholars are unanimously agreed to the legality of forward *ijārah*, they differ in terms of its *takyīf fiqhī*. Some scholars namely Shafī‘ī and Ḥambalī scholars consider it falling into the category of *salam* of usufruct. Whereas some others opine

⁴¹ al-Shubaylī, Yūsuf bin ‘Abd Allāh. (n.d.). ‘Aḥkām Iṣḍār wa Tadāwul Şukūk al-Ijārah al-Mawşūfah fī al-Dhimmah wa Şukūk al-Ijārah ma‘a al-Wa‘d bi al-Tamlīk ‘alā man Ushturiyat minh. Paper presented at 20th session of Majma‘ al-Fiqhī al-Islāmī al-Dualī. P. 4.

⁴² Ḥāmid Mīrah. P. 8.

⁴³ al-Sallāmī, Muḥammad al-Mukhtār. (). al-Ījār al-Muntahī bi al-Tamlīk wa Şukūk al-Ta‘jīr. P. 41.

⁴⁴ al-Qurah Dāgī. P. 22.

⁴⁵ al-Kāsānī. P. 62.

that it is a type of *ijārah*. That is why; those who look at forward *ijārah* as *salam* of usufruct refer its legality to the evidences of *salam*.⁴⁶ They also consider the conditions of forward *ijārah* exactly the same as the conditions of *salam*. In addition, it is executed by the wording of *salam* of *salaf*. On the other hand, those who look at it as *ijārah* of usufruct refer its legality to the evidences of original *ijārah*. Hence, they apply the conditions of original *ijārah* of in forward *ijārah*. They are concerned about the wording of *ijārah* and any other word similar to it as well.⁴⁷ In fact, forward *ijārah* comprises the rules of both *ijārah* and *salam*.

2. PARAMETERS OF FORWARD IJĀRAH:

2.1 Classification of Forward *Ijārah* and Its Relation:

2.1.1. Classification of Forward *Ijārah*:

Subject matter of forward *ijārah* includes two elements: usufruct and consideration or counter value. Usufruct can be two types: benefits of objects and personal services. Hence, forward *ijārah* is classified into three types. These are as follows:

Forward *Ijārah* by Stipulating Consideration:

It is an *ijārah* contract wherein the subject matter is a consideration described by certain specifications with undertaking of future responsibility. In this case, forward *ijārah* is not rendered void by the destruction of the object and nor by the appearance of a defect in the object. There is nothing that breaches the condition agreed upon among two parties; since the condition here is not attached to a particular object that the purchaser or *musta'jir* (hirer/lessor) does not fix for buyer or *ajir* (hired/leasee) in order to discharge his responsibility.⁴⁸

⁴⁶ al-Bahūtī. pp. 4/28, 39. Abū Guddah. pp. 71,73.

⁴⁷ Abū Guddah, pp.,73-74.

⁴⁸ Aḥmad Naḥṣṣār. P. 103. al-Būṭī, Muḥammad Sa'īd “*al-Ijārah al-Mawṣūfah fī al-Dhimmah*”, a paper presented at the 2007 Conference on the Practice of Islamic Finance and Banking, held in Bahrain, p. 3.

Forward Ijārah by Stipulating Personal Service:

It is an *ijārah* contract wherein the subject matter is an action described by certain specifications with undertaking of future responsibility. In this case, the contract of forward *ijārah* does not pertain to the person himself rather it is connected with obligation of *musta'jar* (hired/*ajir*). For example, the first party (*musta'jir*) says to the other party (*musta'jar/ajir*), "I obligate you with this dirham for tailoring it" or "I hand over this dirham for tailoring it".⁴⁹ Here, the *ajir* has right to execute the stipulated work by himself or if he wants he can hire third one who is capable to execute the stipulated work.⁵⁰

Forward Ijārah by Stipulating Object:

It is an *ijārah* contract wherein the subject matter is an object described by certain specifications with undertaking of future responsibility. Many scholars use the term *kirā'* (charter) for a rental contract of something like pack animal, cars or ships. The *ijārah* contract here occurs on an object delimited by specifications that the lessor undertakes to perform. For instance, the first party says to the other party, "I give you its benefits (i.e. the object stipulated in obligation) for a year for such amount."⁵¹ If it is a pack animal, for instance, mention of animal's type is obligatory because the purpose of using animals differs based its fast speed and slow speed.⁵²

2.1.2 Relation of Forward Ijārah to Other Classifications of Ijārah:

Forward Ijārah, operational and financial Ijārah:

Primarily, *ijārah* is divided into two kinds: operational *ijārah* (*ijārah tashgīliyyah*) and financial *ijārah* (*ijārah tamlikīyyah*).⁵³ Both of them can be executed on the basis

⁴⁹ al-Haytamī, Shihāb al-Dīn Aḥmad ibn Ḥajr. (n.d.). *Tuḥfat al-Muḥtāj fī Sharḥ al-Minhāj*, 42/952. al-Būṭī. P.4.

⁵⁰ Aḥmad Naṣṣār. P. 103. al-Būṭī, p. 6.

⁵¹ Aḥmad Naṣṣār. P. 103. al-Būṭī, p. 11.

⁵² Aḥmad Naṣṣār. P. 8.

⁵³ al-Bahūtī. 2/351.

of forward *ijārah* or particularized *ijārah*. Because the subject matter here also can be either particular or stipulated.⁵⁴ Thus, two types of forward *ijārah* can be derived i.e. forward operational *ijārah* and forward financial *ijārah*.

Forward Ijārah and Joint Ijārah (Ijārah Mushtarakah):

According to the utility provider, *Ijārah* is sub-divided into two kinds: private *ijārah* (*ijārah khāṣṣah*) and joint *ijārah* (*ijārah mushtarakah*). It is observed that forward *ijārah* is applicable only in joint *ijārah* because the private employee (*ajīr khāṣ*) is particular by its nature. Hence, there is no need for stipulating his service rather it is already specified.⁵⁵ Thus one form of forward *ijārah* can be derived i.e. forward joint *ijārah*.

Forward Ijārah and Ijārah Effective in Future (Ijārah Mudāfah lil Mustaqbal):

According to the time of execution, *ijārah* is classified into two types: spot *ijārah* (*ijārah munjazah*) and ‘*ijārah* effective in future’ (*ijārah muḍāfah lil mustaqbal*). The spot *ijārah* is executed immediately whereas the conclusion of ‘*ijārah* effective in future’ is assigned to a future date. The latter type is from the requirements of forward *ijārah* because its subject matter is either non-existent or not owned by the lessor at the time the contract is concluded. Therefore, its execution needs to be assigned to a future date when the lessor can be able to possess the leased benefit, which was not specified at the time the contract was entered into. *ijārah* effective in future is completely different from suspended *ijārah* (*ijārah mu‘allaqah*). In the former case, the contract occurs when it is signed, but its effect is delayed. By contrast, in the latter case, the contract does not occur until the condition that the contract suspended for.⁵⁶

⁵⁴ Abū Guddah. 75.

⁵⁵ Ibib.

⁵⁶ Ibib. P. 26.

2.2 Pillars of Forward *Ijārah*:

As forward *ijārah* is a kind of *ijārah* the essential elements (*arkān*) of forward *ijārah* are similar to particularized *ijārah*. According to the majority of jurists, these essential elements of *ijārah* are:⁵⁷

1. The *ṣighah* (word of offer and acceptance): It concludes any wording that signifies transfer of benefits in exchange of a consideration. *Ijārah* can also be valid by *mu'āṭāh* (handover)⁵⁸ without wording of offer and acceptance. Although different *ṣighah* such as *salam*, *salaf*, *ilzām*, and *ijārah*; are used to execute any contract it has an impact on the ruling of forward *ijārah* according to those scholars who differ in terms of spot payment or deferred payment of consideration.
2. The subject matter (encompassing usufruct and rental).
3. The contracting parties (the lessor and lessee). The conditions pertaining to them are well known, i.e., maturity and legal competence to enter upon the contract.

2.3 The Rules of Forward *Ijārah* in Islamic Jurisprudence:

The general condition that forms the parameters and rules to shape up forward *ijārah* is exploring all the attributes of *salam* contract stipulated in obligation i.e., to maintain properly all the conditions and rules of *salam* contract. This is because forward *ijārah* is a *salam* contract but it pertains to usufruct. Al-Bahūtī says: “The condition of *ijārah mawṣūfah fī dhimmah* is to survey all the characteristics *salam* stipulated in obligation because the purpose of use differs according to the difference of qualities. Therefore if the usufruct is not stipulated by what makes it precise, *jahālah* of usufruct leads to the disputes. If the traits of *salam* are surveyed in terms of *ijārah* it will be more

⁵⁷ al-Zuhaylī. 4/731. Abū Guddah. P. 74.

⁵⁸ *Ṣighah* is a simple exchange of an item for payment without accompanying any verbal statement.

preclusive for disputes and far from *gharar*.”⁵⁹ Forward *ijārah* has some rules in general and some other rules particular to its types. The following are the general rules of forward *ijārah*:

2.3.1 General Rules of Forward *Ijārah*:

1. It is not permitted to delay the consideration, or replace after agreement upon it, or *hawālah bihā* (shifting the responsibility of its payment to a third party or *hawālah ‘alaihā* (taking the responsibility from a third party relying on it), or release from it. Rather it is mandatory to pay the consideration on the spot at the time the contract is concluded as the capital of *salam* contract, because this is a *salam* contract for usufruct. If the payment is observed but its amount or quantity is not known, there are two opinions about capital of *salam* contract.⁶⁰ Ibn Rushd says, “One of the conditions of forward *ijārah*, according to (Imām) Mālik, is to render immediate payment, in order to avoid the sale of a debt for a debt.”⁶¹ On the contrary the Shāfi‘ī and Ḥambalī schools distinguish between the wordings of the *ijārah* contract. If the forward *ijārah* is concluded by the wording of *salam* or *salaf*; for instance: “I handover to you (*aslamtuka*) this amount for the use of a house with such-and-such qualities,” or “for the services of a construction worker of such-and-such qualifications to build a wall.” If the lessor accepts, the payment must be received on the spot so as not to turn the situation into the exchange of a debt for a debt. However, in case wording from *salam* and *salaf* (debt) are not used, for instance: “I oblige you to do such-and-such,” (*alzamtuka*) it is not necessary in such cases to make spot payment.⁶²

⁵⁹ al-Bahūtī. 2/251.

⁶⁰ *Asnā al-Maṭālib*, al-faṣl al-sānī: *Ijārat al-dhimma*. vol. 2.

⁶¹ *Bidāyat al-Mujtahid*, 2/182.

⁶² al-Bahūtī. 2/252.

2. A forward *ijārah* contract pertains to the lessor's obligation. It means that the lessor is responsible to commit the *musta'jir* to perform the desired work in a proper way, no matter how it is done and no matter what undertakes the work. Based on that, the lessor can hire whomever he chooses to execute the work requested of him, and he has the right to come to an agreement with him on a payment as he wants. Imām al-Nawawī says: It (i.e., *ijārah*) is of two kinds: that occurs on a particular object, for instance, rental of a particular piece of real estate or animal or person. Or it occurs in obligation, such as rental of a riding animal stipulated by certain specifications, and it could be in a way that the *mu'ajjir* obliges his (*ajir*) responsibility to sew a garment or to build a building.⁶³ In other word, rental of animal in obligation must be described by specifications without rental of a person to undertake any work. Imām Nawawī notifies of it saying: "If the *musta'jir* says, I oblige you to weave a garment with such and such qualities in the condition that you weave it by yourself; the contract is valid in this case because it is *gharar*."⁶⁴
3. In forward *ijārah*, it is allowed for *mua'ajjir* to take down payment from *musta'jir* for guaranty so that he cannot withdraw execution of the contract and handover the object that he undertakes in the contract to hire; instead of appealing to the judge or authority. Islamic Fiqh Academy decides in resolution no. 72 (3/8) permissibility of taking down payment in every contract either *bay'* or *ijārah* based on the *hadith* narrated by Nāfi' bin 'Abd al-Ḥāris, he purchased for 'Umar bin Khaṭṭāb the prison from Ṣafwān bin Umayyah and Nāfi' said to him if 'Umar is agreed to purchase it is executed

⁶³ al-Nawawī. al-Minhāj ma'a Sharḥihī li al-Sharḥīnī. 2/233.

⁶⁴ al-Butī. P. 13.

otherwise such and such amount of consideration for him.⁶⁵ If the lessor fails to provide the renter with the rented item at the specified time—some of them use the expression “flees from [the responsibility]”—the renter has the option of keeping the contract in effect and accepting the delay, or he may cancel it.

4. The lessor is allowed to use the lease payment for his personal purposes. It is based on analogy drawn from its permissibility *salam* sale. This is proved by the *ḥadīth* narrated by ‘Abd Allāh bin Abī Awfā al-Aslamī, he says, “We went on an expedition to Palestine with Allah’s Messenger (PBUH). The Palestinian peasants would come to us, and we would pay them in advance for wheat and oil at a specified price and for a specified date of delivery.” He was asked, “From whom would they get it?” He replied, “We would not ask them.”⁶⁶ The lessor is allowed to use the payment for personal purposes that are not related to the expenses of providing the service; however, it is required for him to provide it on time and in the manner agreed to.
5. It is allowed to take something as a security deposit from the lessor in a forward *ijārah* contract; for instance, to take a pledge of corresponding value to the work from a builder who has contracted to build a house; in the case he does not build the house, the deposit holder has the right to sell it and use the proceeds to pay someone else to build it. “it is similar to the securities government agencies that take from those who do work for them in order to make sure that they do not perform the jobs negligently.”⁶⁷

⁶⁵ Ahmad Naṣṣār. P. 108.

⁶⁶ *Sunan Abū Dāwūd*

⁶⁷ Aḥmad Naṣṣār. P. 108. al-Jazīrī, ‘Abd al-Raḥmān. al-Fiqh ‘Alā al-Madhahib al-Arb‘āh. 2/220.

2.3.2 Particular Rules of Forward *Ijārah* Respective to its *Arkān*:

Rules of Forward *Ijārah* by Stipulating Considerations:

1. Consideration must be known by specifying its quantity and features if it is stipulated in the form of a future obligation. The amount and features of the consideration must be known if it is delayed, just like delayed payment in a sale. If the hirer says, “Do this, and I will satisfy you,” or “...I will give you something,” etc., the contract is invalid. If the hiree goes ahead and performs the task, he is entitled to the going market rate for a job of that sort. If the terms of his hire are that he gets his living expenses or be provided with clothing, the contract is also invalid.⁶⁸
2. The consideration is allowed to be non-monetary. In the commentary on *al-Bahjah al-Wirdiyyah* it says: “If he (*musta’jir*) hires him (*ajir*) for a certain amount of wheat or barley and specifies it according to the criteria required in a *salam* sale, it is permitted. If he hires him for a certain weight of bread, [it is allowed] based upon the permissibility of selling bread by *salam*. If he rents out a house in exchange for its restoration, or a riding animal in exchange for its fodder, or a piece of land for its crop and the labor required to produce it, or for a specified amount of *dirhams* in exchange for cultivating it on the condition that whatever he spends in doing so is not to be counted as part of the payment, it is not valid. If he rents it for a certain number of *dirhams* on the condition that he spends them on the cultivation, it is not valid because the payment is compounded of the *dirhams* and the cultivation costs, which is an

⁶⁸ al-Gamrāwī. al-Sirāj al-Wahhāj ‘alā Matan al-Minhāj. 1/294.

indeterminate task. If he does spend them on its cultivation, he [has the right to] ask for compensation for them.⁶⁹

Rules of Forward *Ijārah* by Stipulating Personal Service:

1. It is not permitted to stipulate both task and the time devoted to it. Al-Bahūtī says: “[It is] a condition (that the specifications of ‘*amal* and *muddah* devoted to it should not both be determined); for instance, someone says, “I contract you (to sew it) i.e., this garment (in one day),” because he may finish it before the day determined. If [the hirer] uses his labor for the rest of the day, he has exceeded what he contracted him for. And if [the laborer] does not work, he has left doing so in part of the time agreed for it, which makes it avoidable deception, and there is no equivalent to it [in the format that scholars agree upon].⁷⁰ Garments and buildings are like real estate in that their benefits are not determinable except in terms of time. They are like livestock in that it is permissible to execute contracts for particular individuals among them or generally on the basis of a binding obligation to provide specimens that meet stipulated qualities. If a benefit is assessed in terms of a task, for instance, “I contract with you to transport such-and-such...etc.,” the contract is valid.⁷¹
2. If the contract is on a stipulated task for which the responsibility is assigned, it becomes like *salam*. Therefore, it must be accurately described by the qualities of a *salam* contract in order that [the responsibility] becomes known [to both parties]. (And the contractor to render service [*ajīr*] can only be a human being) because [the contract] entails the undertaking of legal responsibility, and non-humans cannot assume legal responsibility. And the contractor must be legally able (*jā’iz al-taṣarruf*) because it involves consideration for a task

⁶⁹ Aḥmad Naṣṣar. P. 109. Sharḥ al-Bahjah al-wardiyyah. 2/206.

⁷⁰ al-Bahūtī. 2/252.

⁷¹ Aḥmad Naṣṣar. P. 109. Fatāwā al-Subkī. 2/372.

which responsibility is assigned; therefore, it is not allowed for someone lacking legal ability. (The contractor [*ajīr*] is [also] called a *mushtarik* [participant]) because he accepts tasks on behalf of a group, with the profit shared between them.⁷²

Rules of Forward *Ijārah* by Stipulating Object:

1. A forward *ijārah* contract is not void if the object being leased damaged unlike the particularized *ijārah*. Al-Minhājī says: “Rental of a particular [animal] is annulled if the animal dies, and the option to annul becomes operative if it has a defect, but forward *ijārah* is not void by destruction [of the particular object].”⁷³
2. There is no option to annul a forward *ijārah* contract due to a defect. Al-Minhājī says: “That is because the lessor has the obligation to replace the defective item. There is no option to annul it (i.e., a forward *ijārah* contract) due to a defect; however, the lessor is obligated to replace it. And the food that was carried to be eaten must be replaced, if it has been eaten, according to most correct view.”⁷⁴
3. The lessor must provide services that are subordinate to the usufruct. This is different from the lease of a particularized *ijārah*. Al-Minhājī says: “The lessor has the responsibility to take the riding animal out in order to look after it, to help the rider mount and dismount it as needed, to help load baggage onto it and unload it, and to saddle and unsaddle it. When one is renting a particular animal the only responsibility of lessor is to turn the animal over to the renter.”⁷⁵

⁷² Aḥmad naṣṣar. P. 110. al-Mubdi‘ Sharḥ al-Muqana‘. 6/84.

⁷³ al-Minhājī. 2/212.

⁷⁴ Ibid.

⁷⁵ Ibid.

CONCLUSION:

Finally, it can be said that although forward *ijārah* is a new form of transactions introduced to the Islamic banking industry it has ground in the classical books of Islamic Jurisprudence. However, most of the classical scholars discussed it with particularized *ijārah* in parallel without any separation of chapters or headings unlike al-Bahūtī and al-Minhājī. They classified *ijārah* into two kinds and discussed them in particular. That is why; it has not been highlighted as an individual contract at the beginning of Islamic financial institutions. The scholars of four schools of Islamic Law are unanimously agreed on the legality of forward *ijārah* albeit some contemporary scholars mention the early dispute in this regard and attribute prohibition of forward *ijārah* to Ḥanafī School. This attribution is not accurate as it is proved by their many classical texts. Forward *ijārah* could be more flexible for both customers and banks to the extent that it does not become void if the stipulated usufruct damages while particularized *ijārah* becomes void because of damage of the object. Therefore, there is a need for further research in this regard in order to innovate some new tools that can improve the services of Islamic financial intuitions. The following suggestions are put in this regard:

1. Unanimous agreement on forward *ijārah* should be settled in the minds of both the practitioners of Islamic finance industry and their customers as well; in order to develop Islamic financial transactions and to promote the products of Islamic Finance industry based on the unanimous agreement.
2. Some research should be conducted on those financial modes wherein the concept of forward *ijārah* is already used such as MMP, *istisnā'*, parallel *istisnā'* e.t.c., in order to investigate the validity of those products.

3. There is utmost need for a forum to be held on “Towards Reconciliation of Disputes and Unanimous Agreement of Classical Scholars on Forward *Ijārah*” in order to remove the confusion of disagreement in this regard and to promote the practitioners to innovate some products based on the agreed view.

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